



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

Twenty-fourth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 417th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 May 2000, at 3 p.m.

Chairman: Mr. BURNS

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Portugal (continued) (CAT/C/44/Add.7)

1. At the invitation of the Chairman, the delegation of Portugal (Mr. Pais, Ms. De Albuquerque, Mr. Ferreira, Ms. de Matos, Mr. Dias and Ms. Carvalho) took places at the Committee table.
2. The CHAIRMAN invited the Portuguese delegation to present its replies to the questions raised by the Committee at a previous meeting.
3. Mr. PAIS (Portugal) thanked the Committee for its positive appraisal of his delegation's report and initial statement. The number and type of questions the Committee had raised reflected well on the thoroughness of its work as a treaty monitoring body.
4. Turning first to the Chairman's comments and questions on deficiencies in police culture and the relationship between the police and the public, he said that, while the former could not be changed overnight, the Portuguese authorities were making far-reaching efforts to modernize the Organization Acts that regulated the country's police forces: the Judicial Police were contributing to criminal investigations under the supervision of the public prosecution, the Public Security Police (PSP) was relinquishing its military connections and becoming a civilian-based force (its first non-military Chief Commander had recently been appointed), and the Republican National Guard (GNR) was also being modernized. Much greater care was being taken in recruiting new members for all those forces: admission requirements had been raised, and new initial assessment and training techniques, such as psychological testing, had been introduced, involving participation by members of civil society such as university professors and representatives of non-governmental organizations (NGOs). In the past three years, every member of the police forces he had mentioned - over 46,000 people - had attended new training programmes that made extensive reference to human rights issues and perspectives, monitored the trainees across all areas of activity, and also covered the use of firearms, supervision of other agencies, and disciplinary and criminal responsibility in cases of abuse of authority.
5. An integrated programme had been developed in order to improve the relationship between the police and the public - the latter meaning not only Portuguese nationals but all people living in or visiting Portugal. The programme was intended to bring about greater police visibility, greater police insertion in community life, and improved knowledge of and dialogue with the public and other bodies in society, particularly the municipalities. The integrated programme comprised several activities, the main ones being the "Safe School Programme", "Elderly People in Security" and "Innovate", which was concerned with contacts between the police and ordinary victims of crime. Collaborative arrangements had been established between the Ministry for Internal Affairs and the Portuguese Association for the Support of Victims.
6. With regard to the Chairman's questions on the definition of torture, he noted that the definition contained in article 243 of the Portuguese Penal Code differed from that contained in

article 1 of the Convention in only relatively minor respects: for example, the words "or for any reason based on discrimination of any kind" had been excluded. The reason was that the principles of legality and typification (i.e. a strict adherence to relevant elements), as set forth in article 30 of the Portuguese Constitution and article 1 of the Penal Code, ensured that expressions with indeterminate or unascertainable meaning in the definition of elements constituting a criminal offence must be excluded from the pertinent provisions of the Penal Code. In the same context, it should be borne in mind that the incriminatory provisions of article 244 of the Penal Code applying to acts of torture frequently overlapped with other incriminatory provisions of the same Code. In such cases, the courts normally imposed the more severe punishment.

7. Turning to the Chairman's questions on trials for acts of torture, he said that in the past three years only one case of torture had been independently recorded. The case, which had been documented by Amnesty International, concerned a PSP officer at Sintra who had applied electric shocks to a prisoner. The officer had been dismissed from the force following disciplinary procedures and was currently undergoing criminal trial. Another case that might have constituted torture had occurred at Sacavém in 1996; however, following the death of the victim the GNR officer involved had been found guilty of the more serious crime of murder, thereby incurring a punishment of 12-25 years' imprisonment instead of the penalty of 1-5 years applicable to torture. The case illustrated the principle of subordination he had referred to in his previous answer, whereby punishment for the more serious crime absorbed that for the less serious crime if the same essential facts applied to both.

8. In reply to another question put by the Chairman, the cases of alleged physical abuse by members of the police forces mentioned in paragraph 51 of the Portuguese delegation's report concerned offences said to have been committed by officers of the PSP and the GNR during the period 1996-1998, and brought to the attention of the Inspectorate-General (Inspeccão-Geral da Administração Interna - IGAI). It was the practice of the IGAI to investigate only the most serious cases involving death, torture, serious physical abuse and abuses of authority. Other cases were handed over to the domestic police forces, with the IGAI maintaining a monitoring role to ensure that due process was completed.

9. Serious cases investigated by the IGAI during the period 1997-1999 comprised: in 1997, 23 cases involving one death, 6 cases of physical abuse and 3 cases involving abuse of authority; in 1998, 32 cases involving four deaths, four suicides, 11 cases of physical abuse, 2 cases of wounding by firearms and one violation of fundamental rights; in 1999, 34 cases involving four deaths, 14 cases of physical abuse, 5 cases of wounding by firearms, 1 case of abuse of authority and 1 case of violation of fundamental rights.

10. The outcome of those inquiries had been the following. In 1997, police officers had been found guilty in eight cases and the following punishments had been applied: one reprimand, three fines, three suspensions from duty, three prison terms (for GNR officers), and one dismissal. In 1998, officers had been found guilty in eight cases and the following punishments had been applied: three reprimands, one removal from active service and four suspensions from duty. In 1999, officers had been found guilty in 13 cases, leading to four suspensions from duty, one reprimand, five fines and one prison term.

11. Turning to the Chairman's questions relating to the Amnesty International report discussed earlier, he said that all 14 deaths reported as having occurred in police custody between 1996 and 1999 had been investigated. Only the death recorded at Sacavém in 1996 had been found to have been caused deliberately by a police officer. Together with two collaborators, he had been dismissed from the GNR and sentenced to prison. In two of the remaining 13 cases - those of Olivio Almada and Victor Santos - it had not been proved that their deaths had resulted from action taken by the officers during the detention. In the former case, the officers had been found guilty of illegal detention, and in the latter the evidence seemed to indicate that the victim had committed suicide and that the officers were not involved.

12. That left 11 cases, which had all involved victims shot during police operations against crime or while the perpetrators of crimes were being apprehended. In six of those cases - Carlos Araújo, Paulo Jorge, Manuel Magalhães Silva and three others not named in the Amnesty International report - it had been found that police officers had made excessive or unjustified use of firearms, and suspensions from duty had been ordered. Some officers had been tried and found guilty of negligent homicide, which carried a penalty of up to five years' imprisonment. In two cases (Fernando Azevedo and one other not mentioned in the report), the officers' use of firearms had been found to constitute a legitimate act of self-defence. The three most recent cases had occurred in Porto in the current year, and proceedings were still in their early stages. In the first, involving police intervention in a public disturbance, the officers involved were currently in pre-trial detention.

13. With regard to the section of the Amnesty International report dealing with ill-treatment by police officers, disciplinary or criminal investigations were under way in the cases involving Marco Fernandes, Juvenal Ova and Mario Rocha. In view of its serious nature, the first case was being monitored by the IGAI in addition to the regional command of the PSP. The IGAI had also investigated the case of the GNR officers in Anadia, and sufficient evidence had been found to initiate eight disciplinary hearings. Criminal proceedings had also been initiated.

14. Of the other cases mentioned, the one involving Carlos Zurita had been closed, since the victim had declined to bring a complaint; the case involving the two Mecha brothers had been investigated by the IGAI and the officers exonerated (six officers had been wounded in attempting to deal with a public disturbance and the police were found to have used legitimate force); and in the cases of Pedro Silva and Pedro Sousa, injured during a demonstration in Lisbon, the facts of the situation had been confirmed, but only in the first case had a perpetrator been found and punished.

15. With regard to the section of the Amnesty International report on illegal detention by police officers, he did not agree that police officers were in the habit of failing to complete detention forms. All the checks carried out, in particular the unannounced inspections by the IGAI, tended to support the opposite conclusion. There had indeed been illegal detention in the cases of Olivio Almada and of several persons at Anadia, but they were exceptional. As to the case of Bruno Mauricio, the inquiries conducted by the police inspection service and the courts had failed to establish the veracity of his complaint.

16. Turning to the section on effective impunity, he rejected the allegation of a "malaise affecting the Portuguese justice system in general". While he accepted that, in general terms, the

cases to which the section referred raised difficulties, criminal charges had been brought in all of them. The question whether the sentences imposed were light was one that the courts alone were able to assess, on the basis of the facts and circumstances of each case. That did not mean that the Portuguese authorities were insensitive to information presented in the media or merely paid lip-service to the principle of judicial independence or presumption of innocence. Rather, he was satisfied that the information provided for the Committee on all the cases cited by Amnesty International demonstrated the adequacy of the measures taken to prosecute those justly accused of acts of torture or ill-treatment.

17. A register of criminal proceedings against law enforcement officials had been established in the Office of the Attorney-General, with a view to collating information from courts throughout the country and establishing tighter controls over the prevention and punishment of crimes relating to the Convention against Torture. Furthermore, the public prosecution service automatically investigated any case of torture or ill-treatment brought to its attention by any means whatsoever, even when the victims failed to lodge complaints through the prescribed legal channels. The only exception concerned the crime of minor common assault.

18. As to the question of violence against the inmates of Porto prison, raised in the Amnesty International document, a delegation of the European Committee for the Prevention of Torture (CPT) had carried out a 12-day visit to Portugal in April 1999 and the CPT, in its final observations on the visit, had requested the Portuguese authorities to prepare a report dealing specifically with the penitentiary facility at Porto. That report, submitted on 30 July 1999, described the measures adopted immediately and those planned for the medium term in order to follow up on the CPT's comments.

19. The first measure had been a thorough evaluation of the situation by the inspection service of the General Prison Services Directorate, focusing on violence between prisoners arising from overcrowding and drug problems. The evaluation had resulted in the adoption of the following measures: a reduction in the number of prisoners from 1,350 to 1,000; the installation of closed-circuit television as an additional surveillance tool; the introduction of additional compulsory patrols inside the facility; an increase (from 5 to 13) in the number of deputy chief guards responsible for monitoring the movement of prisoners in each wing (it was not the case, as the Amnesty International report stated, that prisoners performed that task); and, in recognition of the fact that most violence between inmates was drug related, improved access to health facilities, including more health personnel, better availability of methadone and antidotes, more support for HIV-positive prisoners, and stronger measures to tackle drug trafficking in the prison, including more searches and more sophisticated techniques. Finally, in the current year to date two Porto prison guards had been arrested, one of whom had been placed in preventive detention pending disciplinary action, while the other was simultaneously the subject of a disciplinary inquiry and criminal proceedings.

20. Already, the measures he had described had led to a certain easing of tension and improvements in the relationship between guards and inmates at Porto prison.

21. Turning to the question on universal jurisdiction raised by the Chairman, he said that under article 5.2 of the Penal Code, Portuguese courts enjoyed jurisdiction over all acts committed outside national territory provided they were covered by the terms of a treaty or

international agreement to which the State of Portugal was committed. Portugal therefore had no legal difficulty in accepting the commitments deriving from article 5 (a), (b) and (c) of the Convention against Torture. However, effective implementation of the jurisdiction of Portuguese courts depended on verification of the conditions specified in the Convention and in article 6 of the Penal Code, and was also subject to the universally accepted principles of ne bis in idem and aut dedere aut judicare.

22. The Portuguese penal system was adequately provided with the principles and norms of universal jurisdiction necessary to prevent impunity in cases where basic human rights were violated, in compliance with articles 8 and 29.2 of the Portuguese Constitution. The jurisdiction of Portuguese courts could thus be extended to cases such as that of General Pinochet. However, its effective implementation was dependent on concrete verification of the circumstances, conditions and alleged facts, as stipulated in articles 5 and 6 of the Penal Code.

23. Replying to questions raised by Mr. Yu, he said that a code on the physical conditions of detention facilities in police stations had recently been approved. In addition, the IGAI conducted unannounced inspection visits in police stations, especially those located in difficult areas and which had detention facilities. The inspector checked whether there were detainees, whether the detention logs had been filled out, and whether the dates were correct. The inspector spoke privately with the detainee, checked his information, and heard complaints.

24. Police agents must immediately inform the Public Prosecutor's Office of any detentions. The Code of Criminal Procedure forbade the questioning of detainees by police officers; hearings could be conducted only by judges. The IGAI was currently assessing whether the rigorous recommendations governing the criminal investigation phase were respected by police officers.

25. The Code of Criminal Procedure provided for the acceleration of the trial in cases involving serious crimes, through the intervention of the Procurator-General or, if the case had already come before the court, the Supreme Council of the Judiciary. Delays were investigated to determine responsibility. Various additional measures had been taken to tackle procedural delays, including the appointment of additional judges on an emergency basis, the establishment of quick, easy procedures for the simplest cases, and the creation of measures encouraging recourse to arbitration and court settlements.

26. The delegation believed that the information it had provided concerning the Porto prison, which was the only such establishment where a problem of violence between prisoners had arisen, should be sufficient. After visiting Portuguese prisons, the CPT had reported that the general climate and relations between prisoners and staff were fairly satisfactory. Violence between prisoners, a problem related to drug addiction, nonetheless deserved the close attention of prison administrations. Measures had been taken to improve the treatment of prisoners, to combat drug traffic in prisons, and to provide appropriate training to staff.

27. The delegation had provided information on steps taken to improve the treatment of prisoners in its introductory statement. With a view to combating the drug trade in prisons, detection methods had been improved and proceedings had been initiated against staff. A number of staff members had been expelled, and one had been sentenced to eight years in prison.

Several hundred visitors carrying drugs had been apprehended in 1998 and 1999. Five of those had been arrested, and one had been sentenced to seven years in prison. In addition, prison guards were subject to impromptu check-ups to assess their consumption of alcohol and narcotics. Although staff training courses covered the subject of drug addiction, a recent law required continuing training of staff in that subject and provided for the creation of staff support offices, with a view to ensuring their psychological and emotional stability.

28. Victims indeed had the right to lodge complaints and to receive special attention. Acknowledging that victims of domestic violence and sexual abuse had received inadequate attention when filing complaints, the Government had adopted information and education measures, supported the creation by NGOs of special victim-support offices, and instructed police chiefs to establish such offices in areas where NGOs had not done so. The Portuguese Association for the Support of Victims currently had 11 branches in 10 major cities that provided free, confidential support services, including accompanying victims in emergency situations, referring them to community agencies, providing legal and psychological counselling, offering police forces training in the treatment of victims of crime, and introducing victim-awareness programmes into schools and health centres. The number of victims that had requested support had dramatically increased over the previous decade to over 4,500 cases in 1999.

29. Even when victims did not lodge complaints through the appropriate channels, the Public Prosecutor's Office automatically investigated any case of torture or ill-treatment brought to its attention; the same applied to disciplinary proceedings. Strict communication procedures had been established between the Public Prosecutor's Office, the IGAI and the Directorate-General of Prison Services, allowing for closer supervision of cases handled by those entities.

30. The number of cases that came before the Fact Finding Commission for the Award of Compensation to Victims of Violent Crimes had grown steadily, reaching 82 in 1999, and award amounts had also risen. The average time required to process requests had also dropped considerably, and was currently about four and a half months.

31. Replying to questions raised by Mr. Camara, he said that under current legislation Portuguese citizens over the age of 16 must carry identification papers in public places, places open to the public and places under police surveillance. Article 250 of the Code of Criminal Procedure provided that police officers should request persons in such places to identify themselves if they had reasonable suspicions that a crime had been committed, that an extradition or expulsion procedure was pending, that a foreigner had entered or was residing illegally in the country, or that an arrest warrant existed.

32. If the person concerned failed to produce the proper identification document, the police could attempt to identify him by communicating with a third party able to produce it, by escorting the suspect to the place where the document was, or by having the suspect recognized by a third, duly identified person. If those efforts failed, police agents could then escort the unidentified person to the nearest police station and keep him there only for as long as it took to identify him, which must not exceed 2 hours, or 6 hours for a person suspected of one of the irregularities listed.

33. Police officers were required to show the suspect their badges, to inform him of the reasons for the identification request, to record the facts, and to allow him to contact someone. If the suspect unjustifiably refused to identify himself, he would be formally advised that his refusal was justiciable under the Criminal Code.
34. The report contained statistics on criminal proceedings instituted against police personnel. Simultaneously, the police station concerned initiated disciplinary measures. In grave cases involving death, torture, severe physical injury or grave abuses of authority, the IGAI conducted the disciplinary investigation, which was handled with due rapidity. Criminal proceedings involving cases in which the accused had been previously detained were also given priority.
35. Other, less serious, cases were subject to the general problems afflicting the Portuguese courts, including the backlog of trials, slow proceedings and the obligation to respect legal safeguards, and repeated appeals. In addition, the principle of the presumption of innocence required collection of sufficient evidence, or the trial could not proceed. That was not a matter of impunity but of respect for the necessary procedural safeguards of any criminal proceeding.
36. Disciplinary and criminal proceedings could indeed be undertaken simultaneously. Disciplinary proceedings sometimes began before the start of the criminal prosecution. When, however, the IGAI was informed of the occurrence of a crime, it must immediately communicate that information to the Public Prosecutor's Office, which in turn initiated the criminal proceedings. Conversely, the Public Prosecutor's Office, having initiated proceedings, was obliged to communicate the facts to the police station or the IGAI, so that disciplinary measures could also be taken. Occasionally, disciplinary proceedings were suspended pending the outcome of the criminal trial, especially when the evidence was inconclusive. In all circumstances, the principle of independence of the two kinds of proceeding was observed.
37. Responding to questions raised by Ms. Gaer, he said that the number of complaints had dropped in recent years owing to the training of law enforcement officials in human rights and professional ethics; the evaluation and monitoring of the activities of police forces and prison staff; the dissemination of information about international standards and norms (including the recommendations of the Committee against Torture and the European Committee for the Prevention of Torture) to all personnel working in law enforcement agencies; and the dissemination of information regarding behaviour that infringed on human rights and the disciplinary consequences arising therefrom.
38. The newly adopted amnesty law for minor offences had resulted in the release of about 1,500 prison inmates. It did not affect violations of fundamental rights and freedoms by law enforcement officers in the performance of their duties.
39. In late 1999, the administration of the territory of Macau had passed from Portugal to the People's Republic of China. Before that transition, Portugal had attempted to ensure that Macau would benefit from solid legal protections, particularly in the area of torture. By agreement between the two countries, the Convention against Torture had been extended to Macau in

mid-1999. The reporting obligation now fell to the Special Administrative Region of Macau; a report had not yet been presented. Furthermore, the Macau Criminal Code, adopted in 1995, contained three provisions relating to the crime of torture.

40. Under the terms of the 5 May Agreements, a referendum had been held in East Timor, marking the culmination of lengthy efforts by the international community, and particularly by Portugal, to ensure the Timorese people's right to determine its own political future. Following the wave of violence that had followed the announcement of the results, Portugal had requested the United Nations to intervene, the Security Council had taken action, and an international force had been deployed. In October 1999, the Security Council had established the United Nations Transitional Administration in East Timor (UNTAET), according it overall responsibility for the administration of that territory, including the exercise of legislative and executive authority and the administration of justice. Portugal could not legally extend the applicability of the Convention against Torture or of any other international instrument to East Timor. The Portuguese legal criminal framework nonetheless contained principles and rules that prevented impunity for such fundamental violations of human rights as genocide, slavery and traffic in human beings. There were no legal obstacles to exercising the jurisdiction of the Portuguese courts in such cases, if and when the factual conditions were consonant with the Portuguese Criminal Code and with article 5 of the Convention against Torture.

41. The Government had, however, made efforts to apply some minimum human rights standards in East Timor: regulations issued by UNTAET provided that persons performing public duties should observe internationally recognized human rights standards, citing the major United Nations human rights instruments.

42. Sexual harassment and abuse almost never occurred in Portuguese prisons. In recent years, three cases had been reported, one of sexual abuse and two of harassment; all had been investigated on a confidential basis. In the sexual abuse case, the guard had been dismissed. In one of the sexual harassment cases, the staff member had been dismissed; the other case was still pending.

43. Ongoing training programmes dealt with the role of the police in cases of violence against women. Those programmes featured videotapes that discussed support for women victims, described appropriate treatment methods, and emphasized that women victims should preferably be handled by women police officers and directed toward social, medical and legal support services.

44. The two officers who had sexually abused a young drug addict had been sentenced to six and a half and five and a half years' imprisonment respectively (the first for committing the abuse, the second for acting as lookout) and banned from exercising public duties for four years. They had appealed against the decision. Disciplinary proceedings had also been instituted with a view to their expulsion.

45. With regard to the matter of organ donations, a law enacted in 1994 had created a national registry of non-donors, and authorized persons to stipulate that they did not wish to donate organs after their deaths. That law had been widely publicized by the media.

46. Replying to a question raised by Mr. Rasmussen, he said that the code of medical ethics provided a general framework for the duties of doctors, and stipulated that a doctor must never cooperate in any act of torture, nor allow premises, instruments or medicine to be used for that purpose. In addition, doctors were strictly required to report to the competent bodies any case of torture that came to their attention. Doctors were also forbidden to feed against his will a patient on hunger strike, even when his life was at risk. Doctors providing health care in prison and detention facilities were obliged to respect the interests and personal integrity of the patient. Furthermore, if a person admitted to a prison was wounded, bore marks of abuse, or complained of having been beaten, the doctor must immediately examine and question the detainee. The results were sent to the perpetrator's superiors, who then initiated the appropriate proceedings.

The public part of the meeting rose at 4.05 p.m.